

No. 9/4/87-6Lab./7623.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the Management of M/s The Palwal Co-operative Sugar Mills, Palwal.

BEFORE SHRI S. B. AHUJA, PRESIDING  
OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Reference No. 172/1986

Between

SHRI MAHABIR SINGH S/o SHRI ANANT  
RAM, VILLAGE MIRPUR KURALI, P.O.  
GULABAD, DISTRICT FARIDABAD AND THE  
MANAGEMENT OF M/s. THE PALWAL CO-  
OPERATIVE SUGAR MILLS, PALWAL.

Present :

Shri Lal Singh, A.R. for the Workman.  
Shri H. S. Kaushik, A.R. for the Management.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, the Governor of Haryana referred the following dispute between Shri Mahabir Singh, Workman and the Management of M/s. The Palwal Co-operative Sugar Mill, Palwal to this Tribunal for adjudication :—

Whether the termination of service of Shri Mahabir Singh is justified and in order?  
If not, to what relief is he entitled?

2. On notices being given, the parties appeared.

3 The petitioner's case is that he was employed as Cane Kamgar on 19th November, 1984 for two months. His services were extended from time to time. He alleged that his services were illegally terminated on 13th January, 1986. He was drawing wages of Rs. 525 per month. He has assailed his termination of service as being illegal, against the principles of natural justice, and provisions of Industrial Disputes Act, 1947. He has also alleged that the termination of service is unfair labour practice on the part of the respondent.

4. The case of the petitioner was contested by the respondent. It was pleaded that the workman was employed on 19th November, 1984 for two months on *ad hoc* basis. His duty was to distribute *parchies* to cane growers for supply of cane to the centre. His work was not satisfactory. As a result, the Mill could not get full quota of cane from the growers, which resulted in losses to the Mill. Besides this, it was also pleaded that the workman was found sleeping at the centre during the duty hours on surprise checking by the Managing Director. Accordingly the explanation was called which was found unsatisfactory and his services were accordingly terminated. It was also pleaded that the petitioner has worked for two reasons on *ad hoc* basis and is not entitled to compensation under Section 25-F of the Industrial Disputes etc. In nut shell, it was pleaded that the services of the workman were terminated on account of negligence of his duties. The plea was also taken that the workman was gainfully employed.

5. On the pleadings of the parties, following issues were settled :—

(1) Whether the termination of services of Shri Mahabir Singh is justified and in order? If not, to what relief is he entitled? OPM

(2) Whether the claimant is gainfully employed? OPM

6 The management examined Shri D. C. Sharma, Office Superintendent MW-1 whereas the workman came in the witness box as HW-1 and also examined Shri Shiv Charan WW-2.

7. I have heard Shri H. S. Kaushik learned authorised representative and Shri Lal Singh authorised representative for the workman. My findings on the aforesaid issues are as under :—

#### ISSUE NO. 1:

8. It is not disputed that the workman was employed on 19th November, 1984 initially for two months. Exhibit M-1 is the copy of appointment order. His services were terminated,—vide order dated 13th January, 1986 copy Exhibit M-2. The petitioner's stand is that he has been working continuously during this period in the Sugar Mill. He has made a statement to this effect on oath. D. C. Sharma, Office Superintendent of Sugar Mills MW-1 could not deny in cross-examination that the workman had completed more than 240 days during last 12 months preceding the date of termination of his services.

In such circumstances it can easily be assumed that the petitioner has been in continuous service in Sugar Mill for the period from 19th November, 1984 to 13th January, 1986 when his services were terminated. Admittedly there was no compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 before terminating services of the petitioner inasmuch as no wages in lieu of notice or retrenchment compensation was paid to him at the time of termination of his service. Thus termination of his service is not in conformity with the provisions of Section 25-F of the Industrial Disputes Act, 1947 which renders the order of termination as void *ab initio*.

9. That apart there is another flaw in the termination order. The termination order reads as under :—

"Due to negligence in your works your services are no longer required with effect from 7th January, 1986."

This order was passed on 13th January, 1986 copy Exhibit M-2. This order is punitive in nature. It is admitted fact that no charge-sheet was given to the workman and no domestic enquiry was conducted to find out whether the workman is negligent in his duty or not. Even before this Tribunal no serious attempt had been made to establish that the workman was negligent in the performance of his duties. The Managing Director who found the workman sleeping during the duty hours was not examined before this Tribunal. The testimony of D. C. Sharma Office Superintendent is not sufficient to hold that the petitioner was negligent in the performance of his duties.

10. As already seen above, the termination order attaches stigma and is punitive in nature. Thus it was incumbent on the part of the management to hold regular departmental enquiry and then passed the order of termination on the basis of findings of the enquiry officer. Such course was not adopted. In other words, the termination has been effected in breach of principles of natural justice and the same is liable to be set aside on this ground as well.

11. Consequently, I hold that the termination of services of Mahabir Singh is neither justified nor in order. He is thus ordered to be reinstated with full back wages and continuity of services.

## ISSUE NO. 2 :

12. There is no evidence that the petitioner is gainfully employed and the issue is answered against the management.

In the result, the award is passed in favour of the workman. No order to cost.

The 18th August, 1987.

S. B. AHUJA,

Presiding Officer,  
Industrial Tribunal.  
Haryana, Faridabad.

Endorsement No. 1123, dated the 31st August, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,

Presiding Officer,  
Industrial Tribunal.  
Haryana, Faridabad.

No. 9/4/87-6Lab./7624.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Bee Ell Industries, Sector 25, Faridabad.

BEFORE SHRI S. B. AHUJA, PRESIDING  
OFFICER, INDUSTRIAL TRIBUNAL, HAR-  
YANA, FARIDABAD.

Reference No. 195/1986.

between

SHRI KALLU S/O SHRI CHHITAL VILLAGE  
FATEHPUR TANGA, TEHSIL BALLABGARH,  
DISTRICT FARIDABAD AND THE MANAGE-  
MENT OF M/S. BEE ELL INDUSTRIES, SEC-  
TOR-25, FARIDABAD.

Present :—Shri S. C. Srivastva, A.R., for the  
workman.  
Shri Jagbir Badhana A.R., for the  
Management.

## AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Kallu Workman and the Management of M/s. Bee Ell Industries, Sector-25, Faridabad to this Tribunal for adjudication :—

Whether the retrenchment of Shri Kallu is justified and in order? If not, to what relief is he entitled?

2. On receipt of orders of reference, notices were issued to the parties who appeared.

3. The respondent management contested the employed with the respondent with effect from 10th August, 1982 as a fitter. His last drawn wages were Rs. 675 per month. He alleged that he was active member of the Union which was disliked by the Management and his services were illegally terminated by the respondent Management on 13th August, 1986 without any reason, payment of dues or compensation. He challenged the validity of the order of termination of his services and prayed for reinstatement with full back wages and continuity of service.

3. The respondent Management contested the case of the petitioner. It was pleaded that the petitioner Shri Kallu was the Fitter in their Company which is engaged in the work of refractory. Kallu Petitioner was surplus fitter. Hence his services were retrenched with effect from 13th August, 1986 in accordance with law. It was specifically mentioned that the petitioner refused to accept the letter as well as retrenchment compensation which was offered to him on the same date and on his refusal, the amount was remitted by bank draft under registered A.D. post which letter was also refused by the petitioner. Thus it was pleaded that the retrenchment of the petitioner was justified and in conformity with law.

4. On the pleadings the parties, the following issues were settled :—

- (1) Whether the retrenchment of Shri Kallu is justified and in order? If not, to what relief is he entitled? OPR.
- (2) Whether the reference is bad in law? OPR.

5. The respondent-management examined Shri Hari Kishan Singh Accountant of their factory, A. K. Banerjee, Salesman of their factory

and produced on record documents Ex. M-1 to M-9, whereas the petitioner Kallu came in the witness box as WW-1 and examined Hari Singh WW-2 and Hans Raj WW-3 and relied upon the documents Ex. W-1 to W-6.

6. I have heard Shri S. C. Srivastva, learned Authorised Representative for the workman and Shri Jagbir Badhana, learned Authorised Representative for the respondent and perused the record. My findings on the aforesaid issues are as under :—

Issue No. 1 :

1. The petitioner was retrenched from his services with effect from 13th August, 1986. He has challenged the legality of the retrenchment order. Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) postulates three conditions to be fulfilled by the employer for effecting valid retrenchment, namely :—

- (a) One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice ;
- (b) Payment of compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess six months ; and
- (c) Notice to the appropriate Government in the prescribed manner.

In this case, all these three conditions have been duly complied with by the employer before effecting retrenchment. Not only this, the employer had also prepared seniority list and displayed it on the notice board in respect of fitter category of workmen. The copy of the seniority list was also sent to the Labour Officer and Ex. M-1 is the seniority list, which has been proved by MW-1 Hari Kishan Singh Accountant of the factory. Kallu was only one fitter in the factory. He was found surplus on account of installation of new automatic machine and thus step was taken to retrench him from services. It has come in the testimony of Hari Krishan Singh MW-1 that new automatic machine was installed which has rendered the services of Kallu as surplus. After displaying the seniority list on the notice Board, the management offered Kallu wages in lieu of notice and retrenchment compensation as

stipulated in Section 25-F (a) and (b) of the Act alongwith letter Ex. M-2 on 13th August, 1986. A sum of Rs. 3074-95 p. was offered to him. The petitioner refused to receive the letter and the amount offered to him. This fact is amply established from the testimony of Hari Kishan Singh MW-1 and A. K. Banerjee MW-2. Assertion on the part of Kallu workman in his testimony as WW-1 that no amount was offered to him, is of little significance and does not carry any weight. It is also significant to note that when petitioner refused to receive the amount of retrenchment compensation, the amount was remitted to him with covering letter Ex. M-9 by bank draft under registered cover on the same date at his known address. Kallu petitioner has admitted in his statement before this Tribunal that the address given on the envelope is correct. The petitioner refused to receive the registered letter Ex. M-9 (copy Ex. M-3) and the bank draft sent alongwith it which fact is amply established by the endorsement made by the postman on the envelope Ex. M-4. It is also worthwhile to note that the entry to this effect was also made in the cash book, copy of which is Ex. M-5. The Management has no alternative except to remit the amount by bank draft when the workman refused to receive the amount. Thus there was a sufficient compliance with the provisions of Section 25-F (a) and (b) of the Act. For such view support is sought from the decision in case of *Indian Compressors Makers Corporation and Labour Court, Delhi & others*, 1977 F.L.R. pages 180 (Delhi High Court).

8. The Management also pleaded that according to the provisions of Section 25-F (c) they have sent intimation to the Government,—vide letter Ex. M-6,—vide registered cover as per testimony of Hari Kishan Singh MW-1. Thus there was sufficient compliance of provisions of Section 25-F of the Act in effecting retrenchment.

9. The learned authorised representative for the workman contended that the action of the Management was *mala fide* and the workman was retrenched on account of his trade union activities and retrenchment was a device to get rid of unwanted workman. His argument is without any merit. There is no material on record to show that the Management was in any manner annoyed on account of trade union activities. It has not been spelled out that what type of trade union activities was being indulged in by the petitioner which prompted the Management to take this step. Rather the Management at the instance of

the workman has produced on record copy of bills to show that they had purchased new automatic machine. This document was placed on the record by the Management on the application moved by the workman. Thus it can be said that the Management found Kallu petitioner surplus on account of installation of machine. The employer is well within his right to organise his business for reasons of economy and convenience. The resulting discharge and retrenchment would have to be considered as inevitable though unfortunate consequence of such re-organisation.

10. It was contended on behalf of the workman that seniority list of all the workers was not prepared and thus it can not be assumed that the petitioner was junior most person who would be retrenched. This argument is also fallacious. It is well settled that the seniority for the purpose of retrenchment need not to be prepared of all the employees working in the factory. The requirement of law is that list of such employees of particular category of workmen is to be prepared from which category retrenchment is to be effected. It has come in the testimony of MW-1 Hari Kishan Singh Accountant that there was only one fitter in the factory.

11. It was contended by the authorised representative for the workman that after the retrenchment of Kallu petitioner one Shri Lal Singh has been re-employed as Fitter in the factory. Such contention is not borne out by reliable evidence on record. Lal Singh has not been examined by the workman in support of his plea. The testimony of Hari Singh WW-2 and Hans Raj WW-3 which is to the effect that Lal Singh is working in place of Kallu is not worthy of credence. Hari Singh WW-2 claims that he was working in the factory as Operator but he has no documentary proof to prove his such assertion. Hans Raj WW-3 claims that Lal Singh is his brother in law. He also claims that he was also working in the respondent factory in the past. He has also no documentary proof to show that he was working in the respondent factory as maintenance Mechanic. Hans Raj WW-3 admitted in cross-examination that Lal Singh also does not possess any documentary proof to show that he is working in the respondent factory. The copies of gate passes Ex. W-2 to W-5 produced on the record by the workman also do not support the plea of the workman that Lal Singh is working there. Besides this Kallu petitioner had relied upon inland letter Ex. W-1 to show that Lal Singh received this inland letter at the company's address. This inland letter seems

to have been manipulated during the pendency of this reference. The letter is date 27th July, 1987 which came on the record. In the first time in the testimony of Hari Singh WW-2. Hari Singh WW-2 was unable to explain satisfactorily how he got this letter. It is worth while to note that the statement of Kallu was recorded in the Court on 16th July, 1987 and it was after this date that inland letter Ex. W-1 allegedly addressed in the name of Lal Singh was manipulated. Mere fact that some unknown person had addressed one letter to Lal Singh at company's address would not mean that Lal Singh is actually working there. Thus it does not lie in the mouth of the petitioner that Lal Singh is working in his place in the factory and that he has been victimised.

12. In the result I hold that valid retrenchment has been effected by the respondent Company after complying all formalities. This issue is answered in favour of the Management accordingly.

Issue No. 2 :

13. This issue was not pressed by the respondent and is answered against the respondent.

The 1st October, 1987

No. 9/3/87-6Lab./7185.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s J. S. Foundry, N.I.T., Faridabad.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT,  
FARIDABAD

Reference No. 26 of 1987

between

SHRI RAM DAYAL, WORKMAN AND THE MANAGEMENT OF M/S J. S. FOUNDRY,  
N.I.T., FARIDABAD

Present.—

None for the workman.

Shri Pardeep Sharma for the management.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act 1947 (herein after referred to as the Act) the Governor of Haryana referred the dispute of service matter between the workman Shri Ram Dayal and the management of M/s. J. S. Foundry, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 789—94, dated 8th January, 1987.

2. Shri Pardeep Sharma has appeared on behalf of the respondent. Shri Ram Dayal, workman has not turned up. It means that he is not interested in pursuing the reference. The reference is answered accordingly with no order as to cost.

Dated, the 13th August, 1987.

14. Accordingly the award is passed that the retrenchment of Kallu is justified and in order and he is not entitled to any relief. No order as to cost.

Dated : the 18th August, 1987.

S. B. AHUJA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endorsement No. 1126, dated 31st August, 1987.  
Forwarded (four copies) to the Commissioner & Secretary to Government Haryana, Labour & Employment Department, Chandigarh as required under Section-15 of the Industrial Disputes Act, 1947.

Dated : the 18th August, 1987.

S. B. AHUJA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

A. S. CHALIA,

Presiding Officer,  
Labour Court, Faridabad.

Endst. No. 1548, dated the 1st September, 1987.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

A. S. CHALIA,  
Presiding Officer,  
Labour Court, Faridabad.

No. 9/3/87-6Lab./7188.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Victor Cables Ltd., 14/1, Mathura Road, Faridabad.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT,  
FARIDABAD

Ref. No. 142 of 1987

*between*

SHRI VIJAY SINGH, WORKMAN AND THE MANAGEMENT OF M/S VICTOR CABLES  
LTD., 14/1, MATHURA ROAD, FARIDABAD

*Present:—*

Petitioner in person.

Shri J. S. Saroha, for the management.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) the Governor of Haryana referred the following dispute between the workman Shri Vijay Singh and the management of M/s. Victor Cables Ltd. 14/1, Mathura Road, Faridabad, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 10321-26, dated 10th March, 1987.—

Whether service of Shri Vijay Singh has been terminated or he has lost lien by remaining absent from duty. What relief is he entitled on this point?

2. It has been stated by Shri Vijay Singh that he has since settled the matter in dispute with the respondent and has received the amount of Rs. 1530 in full and final satisfaction. In view of it he would not be entitled for reinstatement re-employment with the respondent. The reference is hereby answered to the effect that the same has been amicably settled by the parties.

Dated, The 20th August, 1987.

A. S. CHALIA,  
Presiding Officer,  
Labour Court Faridabad.

Endst. No. 1522, dated the 31st August, 1987.

Forwarded (Four Copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

A. S. CHALIA,  
Presiding Officer,  
Labour Court, Faridabad.